

Defense, including members of the armed forces;

(B) ensure that the normal duties and functions of such employees are not, as a result of and during the course of such temporary assignment, performed or augmented by contractor personnel in violation of the provisions of section 2461 of this title; and

(C) certify that the temporary assignment of such employee shall not have an adverse or negative impact on mission attainment, warfighter support, or organizational capabilities associated with the assignment.

(f) **TERMS AND CONDITIONS FOR PRIVATE-SECTOR EMPLOYEES.**—An employee of a private-sector organization who is assigned to a Department of Defense organization under this section—

(1) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense, except as provided in paragraph (2);

(2) is deemed to be an employee of the Department of Defense for the purposes of—

(A) chapters 73 and 81 of title 5;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978; and

(F) chapter 21 of title 41;

(3) shall not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private-sector organization from which such employee is assigned;

(4) may perform work that is considered inherently governmental in nature only when requested in writing by the Secretary of Defense; and

(5) may not be used to circumvent the provision of section 2461 of this title nor to circumvent any limitation or restriction on the size of the Department's workforce.

(g) **PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.**—A private-sector organization may not charge the Department or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department organization under this section for the period of the assignment.

(h) **CONSIDERATIONS.**—In carrying out this section, the Secretary of Defense—

(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5);

(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees; and

(3) shall take into consideration, where applicable, areas of particular private sector expertise, such as cybersecurity.

(Added Pub. L. 114-328, div. A, title XI, § 1104(a), Dec. 23, 2016, 130 Stat. 2445.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (f)(2)(D), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931-934, 941-946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Ethics in Government Act of 1978, referred to in subsec. (f)(2)(E), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

§ 1599h. Personnel management authority to attract experts in science and engineering

(a) **PROGRAMS AUTHORIZED.**—

(1) **LABORATORIES OF THE MILITARY DEPARTMENTS.**—The Secretary of Defense may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for such laboratories of the military departments as the Secretary shall designate for purposes of the program for research and development projects of such laboratories.

(2) **DARPA.**—The Director of the Defense Advanced Research Projects Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.

(3) **DOTe.**—The Director of the Office of Operational Test and Evaluation may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering to support operational test and evaluation missions of the Office.

(4) **STRATEGIC CAPABILITIES OFFICE.**—The Director of the Strategic Capabilities Office may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Office.

(5) **DIUX.**—The Director of the Defense Innovation Unit Experimental may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Unit.

(b) **PERSONNEL MANAGEMENT AUTHORITY.**—Under a program under subsection (a), the official responsible for administration of the program may—

(1) without regard to any provision of title 5 governing the appointment of employees in the civil service—

(A) in the case of the laboratories of the military departments designated pursuant to subsection (a)(1), appoint scientists and engineers to a total of not more than 40 scientific and engineering positions in such laboratories;

(B) in the case of the Defense Advanced Research Projects Agency, appoint individuals to a total of not more than 100 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;

(C) in the case of the Office of Operational Test and Evaluation, appoint scientists and engineers to a total of not more than 10 scientific and engineering positions in the Office;

(D) in the case of the Strategic Capabilities Office, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Office; and

(E) in the case of the Defense Innovation Unit Experimental, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Unit;

(2) notwithstanding any provision of title 5 governing the rates of pay or classification of employees in the executive branch, prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1)—

(A) in the case of employees appointed pursuant to paragraph (1)(B) to any of 5 positions designated by the Director of the Defense Advanced Research Projects Agency for purposes of this subparagraph, at rates not in excess of a rate equal to 150 percent of the maximum rate of basic pay authorized for positions at Level I of the Executive Schedule under section 5312 of title 5; and

(B) in the case of any other employee appointed pursuant to paragraph (1), at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5; and

(3) pay any employee appointed under paragraph (1), other than an employee appointed to a position designated as described in paragraph (2)(A), payments in addition to basic pay within the limit applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed four years.

(2) EXTENSION.—The official responsible for the administration of a program under subsection (a) may, in the case of a particular employee under the program, extend the period to which service is limited under paragraph (1) by up to two years if the official determines that such action is necessary to promote the efficiency of a laboratory of a military department, the Defense Advanced Research Projects Agency, the Office of Operational Test and Evaluation, the Strategic Capabilities Office, or the Defense Innovation Unit Experimental, as applicable.

(d) MAXIMUM AMOUNT OF ADDITIONAL PAYMENTS PAYABLE.—Notwithstanding any other

provision of this section or section 5307 of title 5, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 114-328, div. A, title XI, §1121(a)(1), Dec. 23, 2016, 130 Stat. 2451; amended Pub. L. 115-232, div. A, title XI, §1111, Aug. 13, 2018, 132 Stat. 2011.)

AMENDMENTS

2018—Subsec. (a)(4), (5). Pub. L. 115-232, §1111(a), added pars. (4) and (5).

Subsec. (b)(1)(D), (E). Pub. L. 115-232, §1111(b), added subpars. (D) and (E).

Subsec. (c)(2). Pub. L. 115-232, §1111(c), substituted “the Office of Operational Test and Evaluation, the Strategic Capabilities Office, or the Defense Innovation Unit Experimental” for “or the Office of Operational Test and Evaluation”.

APPLICABILITY OF PERSONNEL MANAGEMENT AUTHORITY TO PERSONNEL CURRENTLY EMPLOYED UNDER SUPERSEDED AUTHORITY

Pub. L. 114-328, div. A, title XI, §1121(c), Dec. 23, 2016, 130 Stat. 2452, provided that:

“(1) IN GENERAL.—Any individual employed as of the date of the enactment of this Act [Dec. 23, 2016] under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as in effect on the day before such date) shall remain employed under section 1599h of title 10, United States Code (as added by subsection (a)), after such date in accordance with such section 1599h and the applicable program carried out under such section 1599h.

“(2) DATE OF APPOINTMENT.—For purposes of subsection (c) of section 1599h of title 10, United States Code (as so added), the date of the appointment of any employee who remains employed as described in paragraph (1) shall be the date of the appointment of such employee under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as so in effect).”

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter I. Defense-Wide Intelligence Personnel Policy 1601
II. Defense Intelligence Agency Personnel 1621

PRIOR PROVISIONS

A prior chapter 85 of this title was repealed by Pub. L. 102-190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993. Previously, the individual sections of that chapter, sections 1621 to 1624, were repealed by Pub. L. 101-510, div. A, title XII, §1207(c)(1), (3), (4), Nov. 5, 1990, 104 Stat. 1665.

AMENDMENTS

1996—Pub. L. 104-201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, substituted “CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES” for “DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL” as chapter heading and added subchapter analysis.

SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

Sec. 1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay.